BellSouth also provided a breakdown, by entity, of the network elements and network functions requested in Florida. While this information is proprietary, the various parties verified the accuracy of the information at hearing. We note, however, that the quantity of network elements and network functions provided by BellSouth in Exhibit 2 in this proceeding, which was verified by the parties, differs from that provided by BellSouth in witness Varner's testimony.

BellSouth believes there is no question that this portion of the Act is satisfied as to business customers. BellSouth asserts that there are at least five interconnectors providing service to business customers which meet this requirement. BellSouth also asserts that there are currently at least two facilities-based providers that are serving residential customers. BellSouth believes that based on a response provided by FCTA, MediaOne is serving residential customers in two different local markets in Florida. BellSouth states that it is aware of two cable companies providing business and residential customers service over their own facilities; however, it is unable to provide any estimates of the total facility-based customers being served by these companies. In addition, BellSouth asserts that TCG is providing facilities-based service to one provider that is, in turn, providing this service to residential subscribers. While BellSouth believes that there is sufficient evidence that facilities-based providers have interconnection agreements with BellSouth and are providing service to residential customers, AT&T contends that there is no evidence in the record to support witness Varner's assertion that these carriers are providing service to residential customers.

TCG witness Kouroupas testified that TCG is a facilities-based ALEC that is currently operating in Florida. TCG has deployed a network consisting of about 380 route miles of fiber optic cable throughout the Southeast Florida LATA, including the installation of a switch in Miami. TCG contends that it provides local exchange service to under 500 business customers either entirely over its own facilities or in part through the use of TCG's own facilities and unbundled elements that TCG has purchased from BellSouth. While witness Kouroupas asserts that TCG does not have tariffed residential service and does not provide residential service in the traditional sense, witness Kouroupas asserts that TCG sells services to resellers and shared tenant service providers who may, in fact, be providing residential service. In fact, witness Kouroupas testified that at least one STS provider is purchasing service from TCG and is, in

turn, reselling it to residential subscribers. We note, however, that there is no additional evidence in this proceeding to confirm if one or more residential subscribers are actually being provided service. Witness Kouroupas also testified that TCG is not offering service through the resale of BellSouth's telecommunications service.

BellSouth argues that the provision of residential service by an ALEC to subscribers through a downstream reseller satisfies the requirements of Track A. We agree. Through the use of facilities owned by TCG, it appears that local exchange service is either being provided to residential subscribers or is intended to be provided to residential subscribers. We do not believe that the existence of a reseller between TCG and the residential subscriber changes this. Furthermore, if the existence of a reseller causes BellSouth not to be compliant with Section 271(c)(1)(A), then any provider could conceivably serve residential subscribers with its own facilities through the use of a reseller, thereby avoiding a scenario that would ultimately satisfy Track A. Thus, we believe that the provision of residential service by an ALEC through a downstream reseller may satisfy the requirement of Track A. Based on the evidence in this proceeding, however, we are unable to confirm if one or more residential subscribers are actually being served by a competing provider, or if residential subscribers are paying for service. Therefore, while we agree that BellSouth is providing access and interconnection to TCG, we cannot determine whether TCG is a "competing provider" of local service to residential subscribers.

FCTA asserts that BellSouth is providing access and interconnection to MediaOne; however, it is pursuant to an interconnection agreement approved under Section 364.162, Florida Statutes, not pursuant to Section 252 of the Act. FCTA also contends that if BellSouth is relying on the MediaOne agreement to satisfy Section 271(c)(1)(A), it does not address all of the 14 checklist items. BellSouth witness Varner testified that the MediaOne agreement has not been implemented to the extent that all 14 checklist items have been addressed. The current agreement that BellSouth has entered into with MediaOne meets all of the checklist items with the exception of checklist item 3. As discussed below, however, we do not believe that Section 271(c)(1)(A) requires that each interconnection agreement contain all elements of the competitive checklist to be a binding agreement. We believe a combination of interconnection agreements can be used to satisfy the requirements of Track A. Accordingly,

FCTA's argument on this point is without merit.

FCTA asserts that MediaOne is currently providing residential service over its own facilities to fewer than 35 subscribers in the city of Plantation, Florida. These residential subscribers have to date not been assessed a fee for their local telephone exchange service. FCTA contends that MediaOne is also currently providing business service to fewer than 10 subscribers with fewer than 2,000 subscriber lines as of July, 1997. FCTA asserts that these business subscribers are all assessed a fee for their local telephone exchange service. The total billings for each month May-June, 1997 were less than $90,000 a month for local business telephone exchange service.

Upon consideration, we are unable to determine whether MediaOne's residential offering is a test or whether MediaOne intends to expand its service offering to additional residential subscribers. While BellSouth asserts it believes that MediaOne's offering involves customers who are actually getting service, witness Varner testified that he has no personal knowledge whether MediaOne has billing systems in place to charge for local exchange service. Furthermore, MediaOne's agreement with BellSouth was negotiated pursuant to state law, rather than Section 252 of the Act. There is no Commission order approving it pursuant to Section 252. Therefore, it is not clear whether there is a binding agreement upon which BellSouth may rely to satisfy Section 271(c)(1)(A).

ICI asserts that BellSouth cannot satisfy Track A, because it has not demonstrated that operational facilities-based competing providers of telephone exchange service now serve residential and business customers in Florida beyond a *de minimis* level. While ICI asserts that it is currently providing local exchange service to business customers in Florida either exclusively over its own facilities or in combination with UNEs purchased from BellSouth, witness Strow testified that ICI is only serving residential customers through resale. Witness Strow testified that ICI provides telephone exchange service in the major metropolitan areas in Florida, including Miami, Fort Lauderdale, West Palm Beach, Tampa, St. Petersburg, Clearwater, Jacksonville, and the Orlando area. ICI currently has its own switches in Miami, Clearwater, Jacksonville, and Orlando.

Sprint also asserts that it is currently providing local exchange service to business customers in Florida, either exclusively over its own facilities or in combination with UNEs purchased from BellSouth. Sprint is a facilities-based ALEC with its own central office switch and a limited fiber optic backbone network. Witness Closz testified that Sprint is focused primarily on serving business customers in the metropolitan Orlando area. While Sprint does not currently serve residential customers through its own facilities or resale, witness Closz testified that Sprint has plans to serve residential customers in the future. Witness Closz, however, was unable to state when that would occur.

While ACSI, LCI, and MFS have requested UNEs from BellSouth, they are not currently providing local exchange service to business or residential customers in Florida exclusively over their own facilities or in combination with UNEs purchased from BellSouth. Witness Falvey and witness Kinkoph testified, however, that ACSI and LCI, are providing service to business customers through resale.

MCI asserts that it has an interconnection agreement with BellSouth under which BellSouth is providing some interconnection. MCI contends that BellSouth is not providing access and interconnection in compliance with its agreement or with the Act. MCI is a facilities-based ALEC with local switches located in Miami, Orlando, Tampa, and Ft. Lauderdale. MCI asserts that it is currently serving a number of business customers either exclusively over its own facilities or in combination with UNEs purchased from BellSouth. MCI is currently not serving any residential customers either exclusively or predominantly over its own telephone exchange service facilities in Florida. MCI ordered an unbundled network element combination to provide residential service to a MCI employee on a test basis in Jacksonville; however, MCI has not charged a fee for this service, since it is a test. MCI also asserts it is conducting a residential resale test in Florida utilizing approximately 60 of its employees, and a business resale test utilizing a few of its own business offices.

AT&T asserts that it is clear from the record that BellSouth is providing some form of access and interconnection to some carriers. AT&T contends that it is not currently providing local

exchange service to business or residential customers in Florida exclusively over its own facilities or in combination with UNEs purchased from BellSouth. AT&T has ordered UNEs from BellSouth and is in the process of performing a concept test on the provision of local exchange service utilizing four AT&T employees. FCCA asserts that while BellSouth is providing some level of interconnection, it is primarily on a small test basis with many problems; thus, it does not meet the Act's requirements. AT&T notes that the FCC's analysis in the Ameritech Order focused more on the nature and level of competition rather than the quality of interconnection. AT&T maintains, however, that BellSouth is not "providing access and interconnection to its network facilities from the network facilities of such competing providers" in Florida, because the nature and level of competition is insufficient. AT&T asserts that because BellSouth did not specify the interconnection agreements upon which it relies to meet the requirements in Section 271(c)(1)(a), it is difficult to analyze this case in a manner similar to the analysis conducted by the FCC in the Ameritech case.

2. "Fully Implemented" Checklist

The competitors argue that Section 271(c)(1)(A) provides that BellSouth's entry into the interLATA market may not occur absent the presence of at least one or more interconnection agreements with a facilities-based local competitor that implements the Act's competitive checklist. MCI asserts that Section 271(c)(1)(A) requires the BOC to "provide" and "fully implement" each of the fourteen checklist items. MCI further asserts that Section 271(c)(2)requires that a BOC requesting entry under Track A must show that it is actually "providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)." FCTA and MCI refer to Section 271(d)(3)(A)(I), which requires full implementation of the competitive checklist, and contend that the Act precludes BellSouth from entering the interLATA market under Track A unless it has "fully implemented" all the items in the competitive checklist. FCTA and MCI assert that the burden of proof on all factual issues lies with BellSouth, and BellSouth has failed to demonstrate that all items in the competitive checklist are fully implemented in accordance with the Act's requirements.

FCTA argues that to satisfy the requirements of Section 271(c)(2)(B), BellSouth must demonstrate that prices for checklist items are based on cost studies conducted in accordance with FCC standards. We recognize that interim rates do exist in some of the agreements that BellSouth has entered into with competitors in Florida. While we also agree that BellSouth must demonstrate that the prices for the checklist items are cost based, we find that for purposes of satisfying Track A, FCTA's argument is without merit. As mentioned earlier, we agree with the FCC's conclusion that Section 271(c)(1)(A) does not require that each agreement contain permanent cost-based prices for all terms of the competitive checklist to be considered a "binding agreement." Therefore, for the reasons stated above, we find that BellSouth has satisfied this portion of Section 271(c)(1)(A).

MFS, ICI and ACSI assert that BellSouth is not providing the access and interconnection required by the Act, because to BellSouth failed to fulfill each of the checklist items. In addition, ICI asserts that while BellSouth is providing some level of access and interconnection, it is not providing unbundled network elements, interconnection, and nondiscriminatory access to operations and support systems, in the manner contemplated by the Act. MCI contends that BellSouth's reliance on the SGAT is an admission that it has not fully implemented all of the checklist items in its interconnection agreements.

BellSouth argues that while it is providing access and interconnection to network facilities for competing providers, its SGAT provides an additional vehicle to provide those items of the checklist that have not been requested by competing providers. BellSouth contends that when its SGAT is approved, it will have generally offered every item on the 14 point competitive checklist. BellSouth's witness Scheye testified that offerings that address each of the 14 checklist items have not just been made to its competitors, they have actually been ordered. BellSouth asserts that no party provided testimony to contradict this fact. According to BellSouth, the parties' real argument here is that the interconnection and access BellSouth provides is not adequate to meet the requirements of the checklist. It is not that BellSouth does not provide access and interconnection at all.

BellSouth argues that its proposed SGAT provides each of the functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BellSouth contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist. Thus, BellSouth believes that if the SGAT satisfies Sections 251 and 252(d), then it also meets the competitive checklist in 271(c)(2)(B). BellSouth further argues that where a competitive checklist item has not been requested, its SGAT is necessary to supplement Track A, because it can demonstrate that the items are made available in a concrete, legally binding manner.

Upon consideration, we find that since BellSouth has entered into arbitrated agreements approved by this Commission pursuant to Section 252 that include provisions for each of the 14 competitive checklist items, an SGAT is unnecessary. The interconnection agreements are concrete, legally binding agreements that satisfy a Track A petition for entry.

According to the FCC, Section 271(c)(1) and the competitive checklist in Section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC petition for entry. The fact that BellSouth has received a request for access and interconnection that would satisfy Section 271(c)(1)(A) if implemented, does not mean that the interconnection agreement, when implemented, would necessarily satisfy the competitive checklist. In addition, the FCC concluded that there is nothing in Section 271(c)(1)(A) or Section 271(c)(1)(B) that suggests that a qualifying request for access and interconnection must be one that contains all fourteen items in the checklist. We agree with the FCC's interpretation. We do not believe that BellSouth automatically fails to satisfy Section 271(c)(1)(A) or Section 271(c)(1)(B) of the Act simply because every interconnection agreement does not address every checklist item.

In the Ameritech order, the FCC specifically found that Section 271(c)(1)(A) does not require that each interconnection agreement contain all elements of the competitive checklist to be considered a binding agreement for 271 purposes. The FCC also stated that it did not believe that competing LECs and IXCs would necessarily purchase each checklist item in every state.

Competitors may need different checklist items, depending upon their market strategies. The FCC stated that the IXC's interpretation of Section 271(d)(3)(A)(I) could create an incentive for competitive carriers to refrain from purchasing network elements in order to delay BOC entry into the in-region, interLATA services market.

Upon consideration, we agree with the FCC that an interconnection agreement does not need to contain all 14 items of the checklist to be considered a "binding agreement." Further, we do not believe that BellSouth would automatically fail to satisfy Track A unless it has "fully implemented" each of the checklist items. We note that the FCC concluded that Ameritech satisfied Section 271(c)(1)(A), but failed to satisfy several of the checklist items in Section 271(c)(2)(B), including OSS, access to 911 and E911, and interconnection. Section 271(c)(1)(A) and Section 271(c)(2)(B) are separate requirements. A BOC could potentially satisfy the Track A requirement of Section 271(c)(1)(A) without satisfying the competitive checklist in subsection (c)(2)(B).

3. "Competing Provider"

Based on the evidence in this proceeding, we find that there are ALECs operating in Florida. These ALECs are providing a commercial alternative to local exchange business subscribers, thereby satisfying the phrase "competing provider" contained in the Act, and recently defined by the FCC in the Ameritech order. According to the FCC, the term "competing provider" in Section 271(c)(1)(A) suggests that there must be an actual commercial alternative to the BOC. The FCC pointed out that this interpretation is consistent with the Joint conference Committee's Report, which stated that "[t]he committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance." While the FCC determined that, at a minimum, a carrier must actually be in the market and operational, i.e., accepting requests for service and providing such service for a fee, it did not address whether additional criteria must be met to consider a new entrant a "competing provider" under Track A. We agree that at a minimum an actual commercial alternative to the BOC must be operational and providing service for a fee prior to a BOC's

entrance into the interLATA market.

4. Competitive Threshold

BellSouth argues that the Act does not require that a competing provider serve a specific volume of customers. Thus, BellSouth asserts, there is no question that it has satisfied the requirement that it provide access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service. FCCA witness Gillan asserts that there is no measurable competition in BellSouth's territory today because BellSouth has not implemented the tools necessary for widespread competition. Thus, witness Gillan asserts that BellSouth does not satisfy the threshold requirements of Section 271.

MCI's witness Wood asserts that the Act contemplates a competitive threshold prior to a BOC entering the interLATA market. Witness Wood states that while he is not suggesting Congress articulated a specific market share loss in local traffic prior to a BOC entering the interLATA market, he believes that Congress was well aware that competition in the local market must occur before a BOC could can enter the interLATA market. Witness Wood, however, does point out that this question could be considered part of the public interest analysis this commission can conduct and comment on in a separate recommendation to the FCC. FCTA witness Pacey also asserts that without determination of a threshold for effective competition, the benefits of local competition for consumers would be compromised. Witness Pacey contends that while she cannot specify a threshold level of competition that must exist in the local market prior to a BOC entering the interLATA market, she states that there must be a truly competitive market structure that is fully operational in the marketplace.

According to the FCC, the word "competing" within the phrase "unaffiliated competing provider" does not require any specified level of geographic penetration or market share by a competing provider. Furthermore, the FCC concluded that the plain language of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration, and thus does not support imposing a geographic scope requirement. The FCC concluded that the Senate and House each rejected language that would have imposed a

requirement regarding a specified level of geographic penetration or market share by a BOC in Section 271 (c)(1)(A). The FCC did recognize, however, that "there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a "competing provider."

Upon consideration, we agree with the FCC that the plain language of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration or market share. We note, however, that the Joint Conference Committee Report specifically stated that it expects the FCC to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. Thus, we believe that competing carriers must actually be operational, with carriers accepting requests for service and providing that service for a fee. It is arguable that the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of Section 271(c)(1)(A). This, however, does not appear to be the intent of the Act. The intent of the Act is that a competitive alternative should be operational and offering a competitive service to residential and business subscribers somewhere in the state. The competitor must offer a true "dialtone" alternative within the state, not merely service in one business location that has an incidental, insignificant residential presence.

While the FCC concluded that Section 271(c)(1)(A) does not mandate a specified level of geographic penetration or market share, the FCC stated that this conclusion does not preclude the FCC from considering competitive conditions or geographic penetration as a part of its public interest consideration under Section 271(d)(3)(C). We agree with the FCC's interpretation on this point.

5. Combination of Customer Classes

Section 271 (c)(1)(A)requires that competing providers offer telephone service either exclusively or predominantly over its

own facilities in combination with resale. BellSouth asserts that the phrase "exclusively over their own telephone exchange service facilities," means that the competitor is not reselling retail telecommunication services of another carrier to provide local service to its customers. Witness Varner contends that a facilities-based carrier may build 100% of its own network, or the competitor may purchase certain unbundled network elements from BellSouth and combine them with facilities they have built to provide service to the end user. This interpretation is consistent with the FCC's interpretation in the Ameritech order. In that order, the FCC interpreted the phrase "own telephone exchange service facilities" to include unbundled network elements that a competing provider has obtained from a BOC.

BellSouth asserts that a combination of facilities-based providers satisfies the requirements of Track A. Witness Varner contends that one competitor with a binding agreement may provide facilities-based service to residential customers and another may provide facilities-based service to business customers. BellSouth asserts that the Act does not state that a single provider to both residential and business customers is required. We agree. ACSI's witness Falvey and FCCA's witness Gillan both testify that BellSouth could qualify for Track A if one competitor with an agreement provides facilities-based service to residential customers and another provides facilities-based service to business customers. Witness Gillan contends what really matters is that both business and residential customers be served on an equal basis with BellSouth.

In the Ameritech order, the FCC concluded that when a BOC relies on more than one competing provider to satisfy Section 271(c)(1)(A), each provider does not need to provide service to both residential and business customers. Thus, Section 271(c)(1)(A) is met if multiple carriers collectively serve residential and business customers. If a BOC, however, is relying on a single provider, it would have to be competing to serve both business and residential customers. We agree with the FCC's interpretation of the Act and believe that Section 271(c)(1)(A) is met if unaffiliated facilities-based carriers collectively serve residential and business customers.

BellSouth also asserts that the Act does not require a provider to serve both customer classes over their own

facilities. BellSouth contends that the Act is satisfied as long as the competitor can reach one class of customers wholly through resale, provided that the competitor's service as a whole is predominantly facilities-based. Witness Varner asserts that this is consistent with Congress's objective of increasing the level of competition in both the local and long distance markets, while ensuring that at least one facilities-based competitor is offering service to both residential and business customers. In the Ameritech decision, the FCC did not determine whether it is sufficient under Section 271(c)(1)(A) for a competing provider to provide local service to residential subscribers via resale, as long as it provides facilities-based service to business subscribers.

Several of the parties in this proceeding assert that Section 271(c)(1)(A) is not satisfied if a competing provider serves one class of customers through its own facilities and the other class of customers entirely through resale. We agree. We believe the Act requires facilities-based competition for both residential and business subscribers. The Joint Conference Committee Report states that facilities-based local exchange service must be available to both residential and business subscribers. Exchange access service to business customers only is not sufficient. Furthermore, the Joint Conference Committee report concludes that resale would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test. Accordingly, we believe the Act requires that facilities-based competition exist for both residential and business subscribers.

D. Conclusion

The evidence presented in this proceeding demonstrates that several ALECs operating in Florida, including TCG, Sprint, and ICI, are accepting requests for telephone exchange service from business customers for a fee. These carriers serve business subscribers either exclusively over their own facilities or predominantly over their own facilities in combination with resale. A large number of confidential filings in this proceeding regarding the number of ALEC subscribers and subscriber lines, provide evidence that confirms that the ALECs in Florida are serving approximately 27,000 business subscriber

access lines in BellSouth's territory. Accordingly, we find that BellSouth is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A), for business subscribers.

In contrast, the evidence in this proceeding does not demonstrate that BellSouth is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A), for residential subscribers. While BellSouth contends that TCG and MediaOne are providing local exchange service to residential customers, there is not sufficient record evidence to support such a finding. We note that while TCG provides service to at least one STS provider that, in turn, resells it to residential subscribers, there is no evidence in the record to confirm that one or more residential subscribers actually receive service.

We do not believe that BellSouth may rely on its agreement with MediaOne to fulfill the requirement of Section 271(c)(1)(A) with respect to residential subscribers at this time. As discussed earlier, based on the evidence in this proceeding, we are unable to determine whether MediaOne's residential offering is a test, or whether MediaOne intends to expand its service offering to additional residential subscribers. We do not believe that the provision of local exchange service on a test basis is sufficient to satisfy this portion of Section 271(c)(1)(A). We believe that the Act requires that a competing provider must be accepting requests from subscribers and service must be provided for a fee. In addition, MediaOne's agreement with BellSouth was negotiated pursuant to state law rather than Section 252 of the Act. There is no Commission order approving it pursuant to Section 252; thus it is unclear whether this agreement is a binding agreement upon which BellSouth may rely in order to satisfy Section 271(c)(1)(A). We encourage BellSouth to file the MediaOne agreement so that it can be reviewed under Section 252.

In summary, we find that BellSouth is providing access and interconnection to competing providers of business service either exclusively over their own facilities or predominantly over their own facilities in combination with resale. Competing carriers are providing a commercial alternative to business subscribers in

Florida. It appears that competing providers are accepting requests from business subscribers and are charging these subscribers a fee. Thus, this portion of Section 271(c)(1)(a)pertaining to business service is satisfied. The record does not support a finding that BellSouth is providing access and interconnection to competing providers of residential service.

IV. COMPLIANCE WITH SECTION 271(c)(1)(B)

A. Introduction

In order for BellSouth to meet the requirements of Section 271(c)(1)(B), it must show that "no such provider" has requested the access and interconnection described in Section 271(c)(1)(A) before the date which is 3 months before the date the company makes its application under Section 271(d)(1). BellSouth must also show that a SGAT that the company generally offers to provide access and interconnection has been approved or permitted to take effect by the state commission under Section 252(f). Specifically, Section 252(f)(2) requires that the SGAT meet two criteria: 1)it must comply with Section 252(d), which requires nondiscriminatory cost based prices, and regulations for interconnection, network elements, transport and termination of traffic, and wholesale rates; and 2)it must further comply with Section 251, which defines duties of interconnection, unbundled access, and resale.

All of the intervenors agree that BellSouth is not eligible to seek interLATA authority in Florida under Track B. They also agree that Track A is the only avenue available to BellSouth, since potential facilities-based competitors have requested access and interconnection from BellSouth in Florida. BellSouth contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. Track B enables a BOC to apply for entrance into the long distance market based on an approved SGAT. BellSouth asserts that this commission's role is to consult with the FCC once BellSouth has filed a 271 application to verify the existence of either a state approved interconnection agreement(s) or a SGAT that satisfies the competitive checklist.

BellSouth argues that its proposed SGAT provides each of the

functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BellSouth contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist contained in Section 271 of the Act. Thus, BellSouth believes that if the SGAT satisfies Section 251 and 252(d), then it also meets the competitive checklist in Section 271(c)(2)(B).

B. Has an Unaffiliated Competing Provider of Telephone Exchange Service Requested Access and Interconnection with Bellsouth?

As stated in Section 271(c)(1)(B), a BOC can only satisfy these requirements of Track B if no competing provider had requested the access and interconnection described in Track A by December 8, 1996, which is ten months after the Act took effect. BellSouth admits, and the parties agree, that numerous carriers requested access and interconnection with BellSouth within ten months after the effective date of the Act.

Upon consideration, we agree that the record in this proceeding demonstrates that BellSouth has received "qualifying requests" for access and interconnection as defined by the FCC. According to the FCC, if a BOC has received a "qualifying request," it may not proceed under Track B. The FCC defined "qualifying request" as a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of Section 271(c)(1)(A). Furthermore, such a request does not have to be made by an operational competing provider; the FCC concluded "the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." (Emphasis supplied)

BellSouth contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. BellSouth contends that Track A requires that competitors' "network facilities" be sufficient to make the competitor "exclusively" or "predominantly" facilities-based. BellSouth believes that this provision of Track A is attributable to the belief of Congress that cable companies would emerge quickly as facilities-based local market competitors. Unlike Track B, Track A requires no waiting period. BellSouth argues

that it is clear from the Act that Congress intended that Track A would be available if facilities-based providers are already in the market. Thus, BellSouth contends that in order to determine if it is eligible for Track B, a factual record is required to determine if any of the companies with which it has entered into interconnection agreements were providing local service over their own facilities at the time of their request. Furthermore, BellSouth does not believe that there is evidence in the record to suggest that this is the case; thus, if BellSouth has not met Track A, BellSouth believes that it is eligible for Track B.

While BellSouth believes that the Act is clear on this issue, BellSouth points out that the FCC interpreted this language to mean that a facilities-based provider is not necessarily required in order to make a BOC ineligible for Track B. Witness Varner contends that the FCC's decision establishes a "Black Hole" between the Track A and Track B provisions of the Act. BellSouth asserts that it does not believe that Congress ever intended for the FCC to create a situation where competitors could effectively decide when customers could enjoy the benefits of competition in the long distance market through in-region BOC entry.

While BellSouth does not agree with the FCC's conclusion in the SBC case that a request by a new entrant that has the "potential" to be a facilities-based provider is enough to make Track B unavailable, BellSouth asserts that the FCC also made it clear that not every request for interconnection is a "qualifying request." In fact, the FCC realized the potential for a BOC to be foreclosed from Track B while at the same time not meeting the requirements of Track A. Thus, the FCC concluded that if a BOC is foreclosed from Track B in a particular state, it would reevaluate the case if relevant facts demonstrate that no potential competitors were taking reasonable steps toward implementing a request in a way that would satisfy Track A.

BellSouth asserts that two of the largest ALECs in Florida, AT&T and MCI, were unable to provide any forthcoming information regarding their plans to enter the market and in what manner. Specifically, BellSouth relies on the testimony of FCCA's witness Gillan who asserted that he had no information as to the specifics of the market entry plan of any of the carriers whom he represented, and MCI's witness Gulino, who was unable to provide

information regarding when MCI plans to serve residential customers. Thus, BellSouth believes that there may be ALECs in this proceeding that have made requests that do not qualify under Track A because of the lack of any indication that they will be providing service to residential or business customers in the future.

As discussed earlier, however, MCI, TCG, ICI, and Sprint assert that they are facilities-based ALECs that are currently providing local exchange service to business subscribers in Florida, either entirely over their own facilities or in combination with unbundled elements purchased from BellSouth. In addition, several competitors assert they intend to serve residential customers in Florida through their own facilities or in combination with unbundled elements purchased from BellSouth in the future. In fact, MCI, AT&T and MediaOne are currently serving residential customers on a test basis in Florida.

As of May 30, 1997, BellSouth had entered into 55 local interconnection agreements in Florida which for the most part have been approved by this Commission. In addition, BellSouth has entered into arbitrated interconnection agreements in Florida with MCI, MFS, AT&T, and Sprint that have been approved by this Commission pursuant to Section 252 of the Act. Based on the record in this proceeding, there are at least four carriers who currently serve business subscribers exclusively over their telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with resale. In addition, there are at least three carriers that have provided testimony in this proceeding regarding their intent to provide service to residential customers over their own facilities. Upon review, the evidence presented here demonstrates that businesses are currently being provided local exchange service and that there are competing carriers in Florida that intend to provide local exchange service to residential customers.

There are two instances where Section 271(c)(1)(B) may remain open to a BOC even if a "qualifying request" has been received. They are: where a state Commission determines that competitors negotiated in bad faith; or where competitors have violated an implementation schedule set forth in an interconnection agreement. AT&T and MCI assert that BellSouth

did not provide any evidence to demonstrate that a new entrant negotiated in bad faith or violated any implementation schedule. We concur. Witness Varner stated that other than some implied intent to offer service when entering into an agreement, there are no implementation schedules in any of the interconnection agreements entered into by BellSouth with competing carriers. BellSouth did not specifically allege, however, that any competing providers have failed to comply with an implementation schedule based on an implied intent. Furthermore, witness Varner stated that he does not believe that any ALEC in Florida has negotiated in bad faith.

Based on the foregoing, we find that BellSouth has received requests from potential competitors for access and interconnection to BellSouth's network that, if implemented, will satisfy the requirements of Section 271(c)(1)(A).

C. Has a Statement of Terms and Conditions That BellSouth Generally Offers to Provide Access and Interconnection Been Approved or Permitted to Take Effect under Section 252(f)?

We have not approved a SGAT that BellSouth generally offers to provide access and interconnection, or allowed one to take effect pursuant to Section 252(f). BellSouth filed a draft SGAT as an exhibit to witness Scheye's testimony. BellSouth contends that given the wording of this issue, and the circumstances surrounding the development of the wording, the literal answer to this issue would be "No." The intervenors all agree that while BellSouth submitted a SGAT to the Commission for approval, the SGAT has neither been approved nor permitted to take effect.

Upon review, BellSouth's SGAT has not been approved or permitted to take effect for the reasons stated in our analysis of the checklist items contained herein.

V. SECTION 271(c)(1)(A), SECTION 271(c)(1)(B), and the SGAT

All the parties, including BellSouth, agree that BellSouth cannot meet the requirements of Section 271(c)(1)through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B)). We agree. As discussed in detail above,

more than one unaffiliated competing provider in Florida has requested access and interconnection with BellSouth. BellSouth, therefore, is precluded from seeking interLATA authority under Track B. Further, the provisions of sections 271(c)(1)(A) and 271(c)(1)(B) are mutually exclusive. Accordingly, BellSouth cannot meet the requirements of Section 271(c)(1) through a combination of track A and track B.

Although BellSouth agrees that it cannot combine tracks A and B, it goes on to argue that it can use the SGAT to demonstrate that checklist items are available even if it elects to file a track A application with the FCC. BellSouth states that although the FCC declined to reach this issue in the SBC Oklahoma case, the Department of Justice endorsed using a SGAT to meet check list obligations under track A under certain circumstances.

BellSouth argues that the plain language of Section 271(c) supports the use of the SGAT in connection with Track A. BellSouth states that 271(c)(1) sets forth the requirements that a BOC must meet to satisfy Track A or Track B. According to BellSouth the next separate subsection, 271(c)(2), requires that access and interconnection that the BOC is "providing", meet the competitive checklist. BellSouth concludes that there is nothing in the language of Section 271 to suggest that the SGAT cannot be used to demonstrate the availability of checklist items that have been "provided" to an interconnector, that is, made available, but not actually furnished.

BellSouth asserts that the intervenors have argued that Ameritech prevents this result. In the FCC Ameritech proceeding, BellSouth states, AT&T and other intervenors contended that in order for an item to be "provided" pursuant to Track A, it had to actually be furnished (i.e., used) by an ALEC. BellSouth states that the FCC rejected the argument of AT&T and the other IXCs, and accepted the contention of Ameritech. Ameritech, however, did not have a State approved SGAT, and therefore did not propose the issue of a State approved SGAT as a means to demonstrate that the items were being made available in a concrete, legally binding manner.

BellSouth points out that the FCC stated in dictum that merely to "offer" an item was not enough, since the offer might

not be backed up by the ability to provide the item. BellSouth states that certain intervenors have argued that this dictum means that a State approved SGAT cannot be used to demonstrate the availability of a particular item if the BOC is filing an application under Track A. This contention, BellSouth argues, is belied by the facts: (1) Ameritech did not have a State approved SGAT, (2) Ameritech did not suggest to the FCC that it consider whether a State approved SGAT can constitute the sort of concrete binding obligation that will demonstrate availability. Moreover, BellSouth argues, the FCC did not make any reference whatsoever to a "state approved SGAT", "state approved agreement", or a state approved "offer". BellSouth asserts that the contention by certain intervenors that this is the meaning of the Ameritech decision is not supported by the language of that decision. Further, BellSouth argues, the contention is illogical.

According to BellSouth, the purpose of this proceeding should be to determine whether BellSouth has either furnished or made available the tools needed by new entrants to compete in the local market. This, BellSouth argues, necessitates that BellSouth's offerings be scrutinized. This scrutiny can be based upon a review of the Statement or by a review of the interconnection agreements, which, in BellSouth's case, contain the same offerings as those set forth in the SGAT. BellSouth believes that the SGAT is beneficial because it provides a comprehensive listing of all BellSouth's offerings it believes to be checklist compliant in one place. BellSouth argues that the utility of the SGAT was demonstrated during the hearing by the fact that Mr. Gillan testified that he relied considerably more on a review of the SGAT than on any Agreement in considering BellSouth's offerings. Further, Mr. Gillan admitted on the stand that "as an economist," that it made no difference whether the offerings scrutinized were contained in an SGAT or in an agreement.

Finally, BellSouth argues that to the extent an SGAT such as BellSouth's incorporates the terms of arbitrated agreements, it is as concrete and legally binding as the agreements themselves. Even if BellSouth's SGAT were not drawn from contracts in actual existence, the fact of state approval, and BellSouth's reliance on that approval, would be more than adequate to make the offerings set forth in the SGAT the type of legally binding obligation that the FCC contemplated in Ameritech.

AT&T, FCCA, ICI and MCI argue that Track A applicants cannot rely on a SGAT to demonstrate checklist compliance; rather, they must rely on state approved interconnection agreements. According to AT&T, the FCC noted that a Track A applicant need not "actually furnish" each checklist item, but may, with regard to items not actually used by a competitor, demonstrate that it is presently able to furnish such items upon request pursuant to state-approved interconnection agreements. AT&T asserts that the FCC specifically found that "the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance." Therefore, BellSouth's proffered SGAT cannot be used to establish checklist compliance because BellSouth is proceeding, and must proceed, under Track A.

FCCA argues that to the extent BellSouth continues to argue that it may proceed under Track A, but fulfill some of Track A's requirements with an SGAT from Track B, this argument has been laid to rest in the Ameritech decision. In Ameritech, the FCC found that the two tracks were separate and that an SGAT, which is relevant only to Track B, could not be used to meet the requirements of Track A. Track A can be met only through the use of state-approved interconnection agreements. FCCA quotes the following from the Ameritech Order:

> Like the Department of Justice, we emphasize that the mere fact that BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.
>
> . . .
>
> Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements [Track A] and the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of

> generally available terms and conditions. [Track B] A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection available... ¶¶110 and 114.

The FCCA concludes that the Ameritech decision makes clear that a SGAT is a document pertinent only to a Track B case. According to the FCCA, it cannot be used to meet the requirements of Track A because it is simply a general offer, not a state-approved interconnection agreement. The FCCA argues that BellSouth's attempt to do so must be rejected.

MCI argues that interpreting the Act to allow BellSouth to rely on an SGAT under Track A would destroy the requirement of full implementation of the fourteen point competitive checklist. According to MCI, Section 271(d)(3)(A)(I) requires that a BOC pursuing Track A must "fully implement the competitive checklist in subsection (c)(2)(B)." (citing FCC 97-298, ¶105) MCI asserts that the threshold requirements of subsection (d)(3)(A) require more than reciting the competitive checklist in a contract. They require that the BOC be "providing access and interconnection pursuant to one or more agreements" that "have fully implemented the competitive checklist." MCI contends that the Conference Report declares that the Congress meant what it said when it required real access and interconnection:

> The requirement that the BOC is "providing access and interconnection" means that the competitor has implemented the interconnection request and the competition is operational. This requirement is important because it will assist . . . in the explicit factual determination by the Commission under new section 271(d)(2)(B) that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2). (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996).

MCI argues that the requirement that the checklist items be "fully implemented" through working "interconnection" assures that, at a minimum, the technological preconditions to local competition are present before the BOCs may compete in downstream markets.

MCI states that the FCC reiterated in its Ameritech decision that Track A requires a BOC to be "providing" access and interconnection pursuant to the terms of the checklist. To provide an item, the FCC concluded, a BOC must make "that item available as a legal and a practical matter." MCI states that the FCC made it clear that merely offering an item under an SGAT did not constitute providing the item and did not meet the requirements of Track A.

The arguments above can be summarized as follows: the intervenors believe an SGAT is only pertinent to a track B application; BellSouth is ineligible for track B; therefore, BellSouth may not rely on a SGAT to demonstrate compliance with the checklist. BellSouth, on the other hand, believes it is not precluded from using an SGAT to demonstrate checklist compliance in a Track A application.

Upon review, we do not believe the FCC had the precise issue of whether a state approved SGAT can be used to supplement a Track A application and demonstrate checklist compliance before it in the Ameritech decision. It is not clear whether the language in Section 271(c) contemplates BOCs using a state approved SGAT to support a Track A application. On the other hand, when considering the Act as a whole, we believe a state approved SGAT could be considered in a Track A application in certain circumstances. We note, however, that BellSouth has received qualifying requests that if fully implemented would satisfy all 14 points of the competitive checklist. Further, it does not appear that BellSouth has met the requirements of Section 271(C)(1)(A), and BellSouth does not have a state approved SGAT. Thus, BellSouth need not demonstrate checklist compliance with a state approved SGAT at this time. Notwithstanding, we briefly address this issue below.

We believe that a state approved SGAT can be used to show that checklist items are available under Section 271(c)(2)(B) whether the BOC proceeds under Track A or Track B. This is not unlike having a tariff on file that lists what services are available. The inquiry does not end there, however, when determining whether the BOC is checklist compliant. The BOCs may not simply rely on the fact that checklist items are contained in a state approved SGAT or in a state approved interconnection agreement. They must show that they are actually providing the

checklist items or that the items are functionally available. This is consistent with the overall goal of the Act which is to open all telecommunications markets to competition.

We do not believe, however, that a state approved SGAT should be the primary avenue for demonstrating checklist compliance in a track A application. The main objective of Section 271(c)(1)(A), appears to be facilities-based competition; whereas, Section 271(c)(1)(B), is available absent a facilities-based competitor. Therefore, track A applicants should first demonstrate checklist compliance through state approved interconnection agreements. One example in which a state approved SGAT would be appropriate is where there may be numerous interconnection agreements and facilities-based competition exists, but none of the interconnection agreements contain Directory Assistance (DA). In this instance, a BOC should be able to demonstrate that DA is available through a state approved SGAT. Of course the BOC would also have to demonstrate that DA is functionally available.

The end result of the intervenors' interpretation appears to be that BOCs could conceivably have operational competitors in their region, but not be granted interLATA authority simply because a checklist item was not contained in an interconnection agreement. This result appears to be at odds with the overall goal of the Act. It is possible that a BOC could never gain interLATA authority under this scenario even though actual competition existed and all of the checklist items were functionally available.

Although we believe BellSouth should be able to use a state approved SGAT to show that checklist items are available, as we explained above, BellSouth is not eligible to do so at this time.

VI. CHECKLIST COMPLIANCE

A. Interconnection in Accordance with Sections 251(c)(2) and 252(d)(1), Pursuant to Section 271(c)(2)(B)(i)

1. Introduction

Section 271(c)(2)(B)(i) sets forth the first checklist item regarding the provision of facilities-based interconnection. Interconnection is the transmission and routing of telephone exchange service and exchange access between the ALEC's network and RBOC's network. Section 271(c)(2)(B)(i) states that interconnection must be provided, or generally offered, in accordance with Sections 251(c)(2) and 252(d)(1) of the Act.

Section 251(c)(2) outlines specifically what constitutes the provision of facilities-based interconnection. Also, this section sets forth three additional criteria that must be met. First, the RBOC must provide interconnection at any technically feasible point within its network. Next, the quality of the interconnection must be at least equal to that which the RBOC provides itself, an affiliate, a subsidiary, or any other party to which it provides interconnection. Finally, interconnection must be provided at rates, terms and conditions that are "just, reasonable, and non-discriminatory," as specified in the carrier agreements, as well as in Sections 251 and 252 of the Act.

Although collocation is not a separate checklist item, it is included as one of the six requirements, along with interconnection, unbundled access, and resale, in Section 251(c). The collocation requirement consists of the duty to provide for physical collocation of ALEC equipment that is necessary for interconnection or access to UNEs at the RBOC premises, under rates, terms and conditions that are just, reasonable, and nondiscriminatory. While physical collocation is the standard requirement, the Act allows for virtual collocation if the RBOC demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. Since Section 251(c)(2) requires that interconnection be provided at any technically feasible point in the network, a carrier's request for collocation must be satisfied, and operating pursuant to Section 252(c)(6) and individual carrier agreements, before the checklist items for either interconnection or unbundled network elements are satisfied.

Section 252(d)(1) of the Act consists of the pricing standards for interconnection and UNEs. This section requires